

\*THE HON'BLE SRI JUSTICE P.S. NARAYANA0

+W.P.No.2254 of 1997

% 10-12-2004

# Adakula Maklla Reddy .. Petitioner

Vs.

1. \$ The Sub-Divisional Forest Officer, (Authorised Officer)

**Mahabubabad, Mahabubabad, Warangal Dist.**

and others. .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for the petitioner : Mr.A.Prabhakar Rao

^ Counsel for respondents : Government Pleader for Forests.

?CASES REFERRED :

1997(6) ALT 238(F.B)

2 2000(6) ALT 754

<sup>3</sup> 1999(1) ALT 142

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH  
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF DECEMBER  
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE P.S.NARAYANA**

**WRIT PETITION NO : 2254 of 1997**

Between:

Adakula malla Reddy, S/o. Veeramallu,  
R/o. narsampet, Warangal District.

**..... PETITIONER**

AND

2. The Sub-Divisional Forest Officer, (Authorised Officer)

Mahabubabad, Mahabubabad, Warangal Dist.

2 The Forest Range Officer,  
Mobile Party-VII, Mobile party-VII,  
Gudur, Warangal District.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, particularly one in the nature of Writ of Certiorari, calling for the records relating to the order dt. 4-10-1996 made in CMA.No.16/94 passed by the District Judge, Warangal confirming the order dt. 24-2-1994 made in office File No.12/SDM/93, passed by the 1st respondent and quash the same as illegal, arbitrary.

**Counsel for the Petitioner: MR.A.PRABHAKAR RAO**

**Counsel for the Respondents: GP FOR FORESTS**

**The Court made the following :**

**ORAL ORDER:**

The writ petition is filed for writ of certiorari calling for the records relating to the order dated 4.10.1996 made in CMA No. 16/94 passed by the District Judge, Warangal confirming the Order dated 24.02.1994 made in Office file No. 12/SDM/93 passed by the 1<sup>st</sup> Respondent and quash the same as illegal and arbitrary.

It is stated that the petitioner is the owner of the lorry bearing No. ADB 4959 and plying the same on hire and eaking out his livelihood. On 9.6.93, the petitioner instructed his driver to transport grains from Ameenabad to Narsampet. On 10.06.1993, he was informed by his brother-in-law, by name Janardhan Reddy, that the lorry was taken under threat by some persons and got it loaded with teak sizes. There upon, the petitioner went to Nekkonda by taking one Yamaha Motorcycle from G.Girinadh and had been to the route in search of the lorry. The petitioner noticed the lorry seized by the forest officials at Chinna Nagaram Village, and when the petitioner went to the 2<sup>nd</sup> respondent to enquire about the seizure of the lorry, he was informed that the lorry was transporting some teak sizes and when petitioner pleaded his ignorance, the 2<sup>nd</sup> respondent also seized the motorcycle. During the enquiry the petitioner gave statements narrating the above facts. But, the 1<sup>st</sup> Respondent proceeded that one lorry was used for transportation of timber and confiscated the lorry on the ground that the petitioner was responsible for transportation of timber. It is also stated that there is no material on record to form such an opinion except self-serving confessional statements recorded by the forest officials. As such, the finding of the 1<sup>st</sup> respondent that the petitioner was involved in transportation of timber cannot be sustained. It is further stated that as against the order dated 24.02.1994 passed by the 1<sup>st</sup> respondent confiscating the lorry, the petitioner filed CMA No. 16 of 1994 before the District Judge, Warangal. The learned District Judge, Warangal also dismissed the appeal on the ground that sufficient opportunity was given to the petitioner during the enquiry under Section 44 of the A.P. Forest Act, 1967 (hereinafter in short referred to 'The Act' for the purpose of convenience). Questioning the said Order made by the learned District Judge, Warangal in CMA No. 16 of 1994, the present Writ Petition is filed.

Sri A. Prabhakar Rao, the learned Counsel representing the petitioner made the following submissions:-

The learned counsel would maintain that even as per the language employed in Section 44 of the Act, it cannot be said that the motorcycle was in any way concerned with the commission of the offence alleged and hence the seizure of the motorcycle definitely cannot be sustained. The learned counsel also would contend that the owner of the motorcycle was not put on notice and no reasonable opportunity was given to the owner of the said motorcycle and in view of the same, the procedure contemplated under Section 44 (2-B) of the Act had not been followed. The learned counsel also further pointed out that except the self-serving statements recorded by forest officials, there is no other material to show that the petitioner is involved in the transportation of the forest produce and that he had acknowledge the use of the vehicle in commission of the said offence. The learned counsel also had drawn the attention of this court to Section 44(2) and also Section 44(2-C) of the Act and would contend that in view of the fact that the said provisions had not been followed, the Order is vitiated and liable to be quashed.

Per contra, the learned Government Pleader for Forests had drawn the attention of this Court to the Order passed by the Authorized Officer-Sub-Divisional Forest Officer, Mahabubabad- 1<sup>st</sup> Respondent and would point out that sufficient opportunity had been given to both the owner of the lorry bearing No. ADB 4959 and the owner of the motorcycle bearing No. AP 36 4390. The Counsel also pointed out to the relevant portions of the findings recorded by the 1<sup>st</sup> Respondent in this regard. The learned counsel also would point out that both the 1<sup>st</sup> respondent and also the appellate authority – District Judge, Warangal recorded the reasons in detail and also recorded findings relating to the compliance of the provisions of Section 44 of the Act. The learned counsel also had produced the records and had pointed out the relevant portions of the Panchanama and the other material available and would submit that there are no merits in the writ petition and the same is liable to be dismissed.

Heard both the counsel.

The writ petitioner is the owner of the lorry bearing No. ADB 4959, which had been confiscated under Section 44(2-A) of the Act. The brief facts of the case

are that on 10.06.1993, at about 10 AM the aforesaid lorry was caught near Chinna Nagaram Village by Forest Range Officer, Mobile Party-VII and on verification, it was found to be carrying 232 pieces of teak timber without any valid permit, which was being escorted by motorcycle and therefore, both vehicles were seized along with timber pieces and after observing formalities, the property was produced before the authorized officer – 1<sup>st</sup> Respondent. The authorized officer – 1<sup>st</sup> Respondent by order dated 24.02.1994 had confiscated the same and aggrieved by the said order, CMA 16 of 1994 was preferred before the appellate authority – District Judge, Warangal and the learned District Judge, Warangal confirmed the same. Section 44 of the Act deals with seizure of property liable to confiscation and procedure thereupon. Sub-section 1 of Section 44 of the Act reads as hereunder:

“Where there is reason to believe that a forest offence has been committed in respect of any timber or forest produce, such timber, or forest produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing any such offence may be seized by any forest officer or police officer.”

The ‘words’, such timber or forest produce together with all tools, ropes, chains, boats, vehicles and cattle used in committing any such offence may be seized by any forest officer or police officer, would assume some importance. On the strength of this language, submissions at length were made that the motorcycle as such, is not involved in the commission of any forest offence and hence the confiscation of the said property is bad in law. Sub-section 2 of Section 44 reads as hereunder:-

“Every officer seizing any property under this section shall place on such property or the receptacle, if any, in which it is contained, a mark indicating that the same has been so seized and shall, except where the offender agrees in writing forthwith to get the offence compounded, without any unreasonable delay, either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorized by the Government in this behalf by notification or make a report of such seizure to the Magistrate.

Provided that where the timber or forest produce with respect to which such offences believed to have been committed is the

property of the Central or State Government and the offender is not known, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to the Divisional Forest Officer.”

Sub-sections 2-A, 2-B, 2-C of Section 44, which may also be relevant for the present purpose, read as hereunder:

“2-A.-- Where as authorized officer seizes under sub-section (1) any timber or forest produce or where any such timber or forest produce is produced before him under sub-section (2) and he is satisfied that a forest offence has been committed, in respect thereof, he may order confiscation of the timber or forest produce so seized or produced together with all tools, ropes, chains, boats or vehicles used in committing such offence.

2-B-- No order of confiscating any property shall be made under sub-section (2-A) unless the person from whom the property is seized is given,-

- a. notice in writing informing him of the grounds on which it is proposed to confiscate such property;
- b. an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and
- c. a reasonable opportunity of being heard in the matter.

2-C-- Without prejudice to the provisions of sub-section (2-B) no order of confiscation under sub-section (2-A) of any tool, rope, chain, boat or vehicle shall be made if the owner thereof proves to the satisfaction of the authorized officer that it was used in carrying the property without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the

tool, rope, chain, boat or vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.”

Submissions at length were made that reasonable opportunity was given to the owner of the motorcycle as per the material available on record. A finding had been recorded that enquiries were held on 24.06.1993, 13.08.1993, 27.09.1993, 26.10.1993, 04.01.1994 and finally on 18.02.1994 and the lorry owner, the writ petitioner herein, attended the enquiry held on 24.06.1993 and he acknowledged the final enquiry, but he did not turn up. A further finding also had been recorded that the owner of the Yamaha Motorcycle, one G.Girinath, also had acknowledged the enquiry notices but he did not attend. It appears from the record that the said G.Girinath filed writ petition praying for the release of the said Yamaha Motorcycle and this court was pleased to direct the forest authorized officer for conditional release of the vehicle pending proceedings under Section 44 of the Act. A further finding was recorded that the owner of the motorcycle, though was given an opportunity, had not utilized the opportunity. Further finding also had been recorded that the writ petitioner herein was unable to sustain his innocence and in view of the same the 1<sup>st</sup> Respondent, taking into consideration the facts and circumstances, was not inclined to accept the offer of compounding as there is enough evidence on record that the crime was perpetrated intentionally with a view to make quick money and accordingly confiscated the timber together with the lorry bearing No. ADB 4959 and also Motorcycle bearing No. AP 36 4390 to the State.

In *SUB-DIVISIONAL FOREST OFFICER, CHENNUR VS. VIJAY B.GULATI AND OTHERS*, the Full Bench of this Court while dealing with Section 44 (2-C) of the Act and interpretation of word ‘or’ used in the provision held as:-

“ the words referable to the owner of the vehicle and the word ‘or’ used therein are all disjunctive and cannot be read in conjunction. They do not connote that all of them have to collectively prove their innocence with regard to want of knowledge or consent of commission of forest offence. The words “----- that each of them had taken all reasonable and necessary precautions against such use” cannot be understood to mean

that all of them have to prove their want of knowledge or innocence collectively, but(not) individually in any manner indicated above. If the driver accompanying the vehicle proves his innocence, question of referring the matter to either the owner or his agent does not arise at all. For criminal offence, anyhow the person-incharge of the vehicle will be proceeded against, but in so far as civil consequences are concerned, it is the owner who loses the property and if the commission of forest offence had taken place without his knowledge or consent and if he had no role to play in the said offence, then it would highly be unreasonable to punish him by confiscation of his vehicle, which would be arbitrary violating Article 14 of the Constitution of India and also will be an unreasonable restriction of his fundamental right guaranteed under Article 19(1)(g) of the Constitution and ultimately it may breach the constitutional guarantee under Article 300-A. Authority of Law does not mean enactment of Law providing for confiscation, but such enactment should conform to the fundamental rights guaranteed in Part-III of Constitution of India as also the Constitutional guarantee under Article 300-A. May be contextually the word 'or' may have to be read as 'and' and sometimes the word 'and' may have to be read 'or'. But the above legal provision involved for interpretation in the instant case can be given a plain meaning understanding 'or' as 'or' only and fastening liability of proving innocence on the owner, agent and driver not collectively but individually and even if there is a failure of proving innocence on the part of the Driver or agent and if the owner proves innocence, his vehicle cannot be confiscated. It is sufficient if the owner proves that at the time when the vehicle was entrusted to his agent or driver, if he was not accompanying, to see that all legal formalities for the transportation of the vehicle were complied with and he had entrusted the transportation to the agent or driver by taking all reasonable precautions and once such steps have been taken by the owner, his responsibility and liability ceases and when vehicle leaves his control and is in the control of the agent or the driver and if the said agent or driver commits any offence like the one in the instant case, then such owner cannot be made liable for confiscation of his vehicle. Confiscation of a vehicle which is used for unlawful purposes in normal course can be ordered only if the owner

connived or had the knowledge of the unlawful use of the vehicle or that his agent did only such things as the owner desired and thus agent's culpability was shared by the owner and in the case of the servant namely the driver in particular only when it is shown that he was carrying out the desires of the owner.

I n *ABDUL KHADER VS. FOREST RANGE OFFICER, RAYACHOTI, CUDDAPAH DISTRICT AND ANOTHER*, while dealing with Section 44(2-C) of the Act, confiscation of lorry and lorry seized while red sandal wood logs being transported which is a forest offence. Burden lies on the owner of vehicle to prove that he had no knowledge, nor connived with the driver and cleaner who were incharge of the vehicle at the time of seizure. Plea of the owner being that he was hospitalized during the said period in the Kurnool Government General Hospital and owner neither examined the Doctor who treated him nor produced any material to prove that he has no knowledge or connivance of the alleged offence. Driver and cleaner had given contradictory statements with regard to loading of logs forcibly in the lorry. Owner failed to discharge the burden, which lay on him. Confiscation of vehicle in the circumstances of the case, held to be not illegal.”

I n *FOREST RANGE OFFICER, LANKAPALLI, KHAMMAM DISTRICT VS. M.V.RAMANA AND ANOTHER*, while dealing with Section 44 of the Act, seizure of vehicle by authorized officer on the ground of carrying forest produce and confiscation of vehicle without any evidence as to knowledge of owner of vehicle in committing the offence was held to be not legal.

In the present case on 10-06-1993 the lorry belonging to the writ petitioner was caught with teak timber costing Rs.1,32,542-70 and it was found that the writ petitioner was riding on motor cycle guarding the lorry near Chinna Nagaram village. Along with the writ petitioner, who was riding as an escort motor cycle, the driver of the lorry and three others were arrested and in the statement made on the same day, the writ petitioner admitted transporting of teak timber escorting the lorry on the motor cycle and also to the effect that the writ

petitioner had no valid permit. However, while giving statement before the 1<sup>st</sup> respondent on 24-06-1993 there was shift of stand even in the subsequent statement dated 24-06-1993 the writ petitioner stated that at his house at Narsampet his brother-in-law Y.Janardhan Reddy informed him that some unknown persons had taken away the lorry for transport of contraband timber on payment of hire, and though the driver did not accept, the driver was threatened and the lorry was taken away. Then he started on a motorcycle to trace his lorry and he was apprehended at Nekkonda Cinema Hall by Forest Officials and took him in a van to Nagaram and when the lorry was actually in motion it was apprehended. The subsequent statement is contradictory to the earlier statement referred to supra. The appellate authority-learned District Judge, Warangal also had recorded a finding that from the material available on record, reasonable opportunity had been given and observance of principles of natural justice also had been specified and accordingly the appeal was dismissed. The learned counsel representing the petitioner advanced the arguments that the owner of the motor cycle was not put on notice, but, however from the records and also from the findings recorded by the 1<sup>st</sup> respondent, he was put on notice and opportunity was given but, however, he did not turn up. Apart from this aspect of the matter, the writ petitioner also participated in the enquiry and subsequent thereto after getting the order of release, a finding had been recorded that the writ petitioner had not evinced any interest further in the matter.

In relation to the confiscation of the lorry bearing No. ADB 4959 submissions at length were made on the strength of the language employed in Section 44(1) and also Section 44(2-C) of the Act. To the effect, this being a penal provision, the same may have to be interpreted strictly. In the light of the language employed in Section 44(1) and 44(2-C) of the Act, the motorcycle bearing No.AP-36 4390 cannot be said to be involved in the commission of the forest offence and hence the confiscation so far as it relates to the motorcycle bearing No.AP-36 4390 cannot be sustained. In the light of the specific language specified in sub Sections.1 and 2-C of Section 44 of the Act, it is needless to say that strict interpretation may have to be given to a penal provision and in view of the same the impugned orders so far as they relate to confiscation of motor cycle bearing No.AP-36 4390 are concerned, the same cannot be

sustained but however, as far as the confiscation of the lorry bearing No.ADB 4959 is concerned, the findings recorded by the 1<sup>st</sup> respondent as well as the appellate authority-learned District Judge, Warangal are in accordance with law and the same are hereby confirmed.

Accordingly, the writ petition is partly allowed so far as it relates to the confiscation of motorcycle bearing No.AP-36 4390. Except this modification in all other respects, the impugned orders are hereby confirmed. In the peculiar facts and circumstances, no order as to costs.

---

P.S.NARAYANA,J

LR COPY TO BE MARKED: YES.

10<sup>TH</sup> DECEMBER 2004

\*TSNR

To

One pair copy to the Hon'ble Mr.Justice P.S.Narayana for his  
lordships kind perusal.

1. The Sub-Divisional Forest Officer, (Authorised Officer)

Mahabubabad, Mahabubabad, Warangal Dist.

2. The Forest Range Officer,  
Mobile Party-VII, Mobile party-VII,  
Gudur, Warangal District.
3. Two CCs to GP for Forest, High Court buildings, High Court of A.P.  
Hyderabad. (OUT)
4. The Under Secretary, Union of India, Ministry of Law, Justice and Company  
affairs, New Delhi.
5. The Secretary, A.P. Advocates Association, Library, High Court Buildings,  
Hyderabad.
6. 8 L.R.Copies
7. Two C.D.Copies.